

7 MAY 1947

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7 MAY 1947

I N D E X
of
EXHIBITS

<u>Doc.</u> <u>No.</u>	<u>Def.</u> <u>No.</u>	<u>Pros.</u> <u>No.</u>	<u>Description</u>	<u>For</u> <u>Ident.</u>	<u>In</u> <u>Evidence</u>
261	2558		Affidavit of MASUDA, Kanetoshi		21630
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1 Wednesday, 7 May 1947

2 - - -

3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 - - -

12 Appearances:

13 For the Tribunal, same as before.

14 For the Prosecution, same as before.

15 For the Defense, same as before.

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17 (English to Japanese and Japanese
18 to English interpretation was made by the
19 Language Section, IMTFE.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present;
4 and that will be taken to be the case at every
5 session unless I announce otherwise.

6 The Tribunal desires all counsel, defense
7 counsel, including Japanese counsel, to be present
8 tomorrow morning before the Tribunal at half-past nine
9 in order to hear an important announcement by the
10 Tribunal.

11 The announcement more particularly concerns
12 defense counsel, but it may not do the prosecuting
13 counsel any harm to hear it.

14 Mr. Logan.

15 MR. LOGAN: May the witness MASUDA, Kanetoshi,
16 be called to the stand.

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MASUDA

DIRECT

1 K A N E T O S H I M A S U D A, called as a
2 witness on behalf of the defense, being
3 first duly sworn, testified through Japanese
4 interpreters as follows:

5 DIRECT EXAMINATION

6 BY MR. LOGAN:

7 Q What is your name and address?

8 A Name, MASUDA, Kanetoshi, Address, the First
9 Demobilization Bureau, Ichigaya, Shinjiku-ku, Tokyo.10 Q Will you examine defense document 261 and
11 tell us if that is your name and seal affixed thereto?12 A This is my affidavit and my seal is affixed
13 thereto.14 Q Are the statements contained in that affi-
15 davit accurate and true?

16 A Yes.

17 MR. LOGAN: I offer in evidence defense
18 document 261.

19 THE PRESIDENT: Admitted on the usual terms.

20 CLERK OF THE COURT: Defense document 261
21 will receive exhibit No. 2558.22 (Whereupon, the document above
23 referred to was marked defense exhibit
24 No. 2558 and received in evidence.)

25 MR. LOGAN: I will now read defense document

1 No. 261, being exhibit 2553, the affidavit of MASUDA,
2 Kanetoshi, beginning on page 2, top of the page,
3 paragraph 3.

4 "I took part in the capture of Kweilin,
5 having been a staff officer of the 11th Army under
6 the command of the commander-in-chief of the China
7 Expeditionary Forces. The town of Kweilin is sur-
8 rounded by insurmountable rocky hills several hundred
9 metres high. As the Chinese soldiers strongly
10 defended themselves from these rocky hills, we suf-
11 fered greatly in attacking them. There were rocky
12 mounds throughout the town also where the Chinese
13 soldiers planned and took up positions to offer stub-
14 born resistance. The military strength of the Chinese
15 army consisted of four divisions (about 20,000 men).
16 Resolved to defend this place to the end before the
17 Japanese army closed in, the Chinese army forbade the
18 residents at large to carry away any provisions in
19 their possession, (this matter concerning provisions
20 is a conjecture on my part) and ordered them to evacuate
21 the town leaving their provisions intact in order to
22 supply the Chinese soldiers (I remember intercepting
23 this order). By the time hostilities were begun, not
24 one single resident was left in town. Accordingly, the
25 enemy resisted to the end, and it took a week before

1 we were able to draw up near the town. But since
2 our unit on the eastern side crossed the river and
3 assaulted the enemy fiercely from the eastern side of
4 the town for two days the enemy at length retreated
5 toward the southwest and we finally managed to capture
6 Kweilin.

7 "Japanese aircraft bombed only the airfield,
8 south of Kweilin, and did not bomb the city sections
9 of the town whatsoever.

10 "A comparison of the Japanese air strength
11 with that of the Chinese at the time of our Kweilin
12 attack, found the Chinese army's strength including
13 the U. S. air units in Chungking consisted of seven
14 or eight hundred planes while ours was but 150. Of
15 these, in the way of bombers, we had not more than
16 30 light bombers. There was such a vast difference
17 in air strength that it was all we could do to but
18 reconnoitre with a few planes. The command of the
19 air was entirely in the enemy's hands and the
20 situation was such that it was absolutely impossible
21 for us to carry out any bombings. So our ground units
22 in this area fought the enemy without the assistance
23 of air support.

24
25 "In the Siangtan-Kweilin operations, the
Japanese army did not bomb within city limits at all

1 (at Hengyang, we did bomb military establishments).
2 Changsha was destroyed by fire from daytime bombings
3 by large formations of enemy planes including
4 U.S.B.-23's, about a week after the Japanese occu-
5 pation of the town. As a result, many Chinese civi-
6 lians were killed by the bombings, and a good number
7 of casualties were suffered by the Japanese army also.

8 "In the Hengyang operations too, after we
9 had interned prisoners of war in the town, and about
10 a week after the occupation, a formation of more than
11 10 Chinese planes raided and bombed the town,
12 inflicting considerable damage. For this reason when
13 we occupied Kweilin, we did not have our army enter
14 the city. The enemy planes however did not come to
15 bomb Kweilin either.

16 "Since commander-in-chief HATA had issued
17 very strict orders concerning military discipline and
18 public morality beforehand, bringing our attention even
19 to the minutest details, we gave our best efforts not
20 to violate the commander's orders and instructions.
21 Accordingly, in the Siangtan and Kweilin operations,
22 our army absolutely did not commit any misdeeds such
23 as pillage, rape and massacre of the Chinese
24 inhabitants."
25

Signed "on this 24th day of December, 1946."

1 Your witness.

2 JUDGE HSIANG: If it please the Tribunal,
3 we will have no cross-examination on this affidavit.

4 MR. LOGAN: May the witness be released on
5 the usual terms?

6 THE PRESIDENT: He is released accordingly.

7 (Whereupon, the witness was excused.)

8 MR. LOGAN: May the witness SUZUKI, Tadasumi,
9 be called.

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1 T A D A S U M I S U Z U K I, called as a witness
2 on behalf of the defense, being first duly sworn,
3 testified through Japanese interpreters as follows:

4 DIRECT EXAMINATION

5 BY MR. LOGAN:

6 Q State your name and address.

7 A My name, SUZUKI, Tadasumi. My address, No. 107,
8 Ogikubo 2 chome, Suginami Ward, Tokyo.

9 Q Will you examine defense document 416 which
10 is now being handed to you, and tell us if that is
11 your name and seal affixed thereto.

12 (Whereupon, a document was handed to
13 the witness.)

14 A My name is there, and my seal is affixed
15 thereto.

16 Q Are the statements contained in that affidavit
17 accurate and true?

18 A A few errors are contained therein.

19 Q Will you tell us what they are?

20 A In my career, paragraph (3) it is written in
21 this affidavit that I have been connected with the
22 Expeditionary Forces in China from July, the 13th
23 Year of Showa (1938) until the end of the war, but
24 that is an error.

25 Q What should it be?

SUZUKI

DIRECT

1 A I went to China in 1938, and then again
2 returned to Japan in July 1941, and again went to
3 China in April 1945 and was there until the end of
4 the war.

5 Q Any other corrections?

6 A That is all.

7 MR. LOGAN: I offer in evidence defense docu-
8 ment 416 with the corrections made by the witness.

9 THE PRESIDENT: Mr. Comyns Carr.

10 MR. COMYNS CARR: Your Honor, the prosecution
11 objects to this affidavit for two reasons.

12 In the first place it deals exclusively with
13 a matter as to which the prosecution has made no alle-
14 gation. It has not been a part of the prosecution case
15 that courts-martial, such as there were, were lenient
16 or not lenient as far as Japanese accused were con-
17 cerned.

18 The second objection is that paragraph (4),
19 the only matter of any substance at all in it depends
20 entirely upon documents not produced or accounted for,
21 and we object to it on that ground, which has been
22 sustained by the Tribunal on many occasions.

23 MR. LOGAN: With regard to the first objection
24 as to no allegations regarding the matters set forth
25 in this affidavit, I might remind the prosecution that

1 throughout this entire case they have consistently
2 examined witnesses, and brought out from their own
3 witnesses, inferences and statements trying, apparently,
4 to show that these accused did not have control of
5 their armies. They further have taken the position
6 that these accused did not issue orders or take the
7 proper steps to punish the commanders in the field
8 or the officers who they claim were responsible for
9 certain cruelties and mistreatment of prisoners of war.

10 With respect to the second objection that
11 no demands were ever made of the courts-martial to
12 exercise leniency, that also falls under the same
13 category as the first objection, and it is quite
14 relevant to the case as to what steps were taken or
15 not taken by these accused with respect to the conduct
16 of the courts-martial.

17 With respect to the third objection that the
18 documents are not accounted for, the affidavit itself
19 only refers to them and does not tend to quote what
20 was in the documents, and if necessary I could ask the
21 witness after the affidavit is read if he has those
22 documents.

23 THE PRESIDENT: If you will refer to written
24 instructions, you must produce them or give good or
25 convincing reasons for their absence.

SUZUKI

DIRECT

1 As to paragraph (5) there is an allegation
2 that opium sellers, including Koreans, were not
3 punished, or not sufficiently punished. I don't know
4 whether Mr. Carr is objecting to that part.

5 MR. LOGAN: I don't recall him saying anything
6 about paragraph (5). I thought he was referring to
7 (4).

8 MR. COMYNS CARR: Your Honor, with regard to
9 paragraph (5), the only objection is irrelevance.

10 MR. LOGAN: I think that is very relevant and
11 material, your Honor. The mere fact Mr. Carr says so
12 doesn't make it so.

13 THE PRESIDENT: The objection is upheld in
14 part and overruled in part.

15 The affidavit will be admitted with the excep-
16 tion of paragraph (4).

17 MR. LOGAN: Do I understand, if your Honor
18 please, that that is on the ground that we failed to
19 produce the documents with respect to that paragraph?

20 THE PRESIDENT: Some Judges may have based
21 their decision on that ground, others may not. I
22 never ask the Judges their reasons, and it wouldn't
23 be practicable for me to do so.

24 MR. LOGAN: The reason I asked, if I was sure
25 that was the reason I would withdraw the witness and

SUZUKI

DIRECT

1 rewrite the document and account for those documents.

2 THE PRESIDENT: All I can say is the Judges
3 are unanimous that that rule about the production of
4 documents or accounting for their absence should be
5 strictly observed.

6 The affidavit, with the exception of paragraph
7 (4), is admitted on the usual terms.

8 MR. LOGAN: Before it is admitted, your Honor,
9 may I stand the witness down? We will redraft the
10 affidavit.

11 THE PRESIDENT: I don't think that the result
12 would be different if you did, Mr. Logan. If any of
13 my colleagues thinks otherwise he will notify me.
14 None has done so. Two of my colleagues may take a
15 different view if the affidavit were redrafted, but
16 only two.

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SUZUKI
AKAGI

DIRECT

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1 MR. LOGAN: May the witness be stood down,
2 if your Honor please?

3 THE PRESIDENT: I cannot give an order on
4 that without the concurrence of a majority, and I
5 have not got it. You have asked that he be stood
6 down. I cannot say that the majority approve of
7 that course, and he ~~won't be~~ stood down.

8 There is now a majority in favor of stand-
9 ing him down. He is stood down accordingly.

10 (Whereupon, the witness was
11 excused.)

12 MR. LOGAN: Thank you.

13 May the witness, AKAGI, Kiyoji, be called
14 to the stand.

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16 K I Y O J I A K A G I, called as a witness on be-
17 half of the defense, being first duly sworn, testi-
18 fied through Japanese interpreters as follows:

19 DIRECT EXAMINATION

20 BY MR. LOGAN:

21 Q What is your name and address?

22 A My name, AKAGI, Kiyoji; my residence,
23 No. 241 Kurosuna-Cho, Chiba City, Chiba Prefecture.

24 Q Will you examine defense document 1391,
25 which is now being handed to you, and tell us if that

AKAGI

DIRECT

Is your signature and seal affixed thereto?

1 A This is unmistakably mine.

2 Q Are the statements contained in that affi-
3 davit accurate and true?

4 A All are true and correct.

5 MR. LOGAN: I offer in evidence defense
6 document 1391.

7 THE PRESIDENT: Admitted on the usual terms.

8 CLERK OF THE COURT: Defense document 1391
9 will receive exhibit No. 2559.

10 (Whereupon, the document above
11 referred to was marked defense exhibit
12 No. 2559 and received in evidence.)

13 MR. LOGAN: I will now read defense docu-
14 ment 1391, being exhibit 2559, deposition, affidavit
15 of AKAGI, Kiyoji, starting with paragraph 2 on page 1.

16 "An outline of my career may be summarized
17 as follows:

18 "1919 Graduated from the military academy, June
19 13th, 1938. Saw service in the field in the central
20 China area as Staff Officer of the 6th Division,
21 June 14th, 1939. Staff Officer in the Manchuria
22 area; later Chief of Staff of the Keijo Divisional
23 District.
24

25 "3. At the time the Central China

AKAGI

DIRECT

1 Expeditionary Force captured Hankow I was among
2 those who first entered the city limits of Hankow
3 as I was an advance party staff officer with the
4 6th Division. In the following I shall relate the
5 battle conditions and the state of affairs within
6 the city at that time:

7 "As the 6th Division had promised to give
8 the honor of first entering Hankow to the 2nd Army
9 commanded by Prince HIGASHIKUNI at the time we
10 were preparing at Kwangsi for pursuit of the enemy,
11 our division tried to restrain in the pursuit of the
12 enemy as much as possible, but as the pursuit pro-
13 gressed more rapidly than our expectations, as a
14 matter of fact a part of the 6th Division did enter
15 Hankow and it finally ended up with the 2nd Division
16 never doing so. And at the time of entering the
17 fortress city, the large force was accommodated in
18 a high school outside the city, and only a small force
19 entered the city fairly and properly.

20 "4. I will start with the battle situation.
21 The 6th Division temporarily formed a motorized unit
22 with about a regiment of infantry and some heavy and
23 light tanks under the command of Regimental Commander
24 SANO, Torato, on 23 October, 1938, and pursuing the
25 enemy entered Kwanghs1. As the bridge was destroyed

1 here, we pursued the enemy along the road with a
2 force consisting of a tank unit of small numbers and
3 about a battalion of infantry from the morning of the
4 24th. As our troop strength was small in number and
5 as our advance was so rapid at this time it was as
6 though we were marking abreast with the retreating
7 enemy and we had no time to capture the enemy, and
8 took no prisoners whatsoever. When we came to
9 Changkungti, a suburb of Hankow, we found the
10 levee broken by the Chiang Kai-shek forces, the place
11 flooded, and finding no way to cross the river we
12 had to resign ourselves to giving up the pursuit.
13 When a part of the motorized unit and the MATSUZAKI
14 3rd Battalion of the SANO Regiment arrived on the
15 spot with five tanks, the defeated enemy who had
16 failed to escape were mustering while waiting for
17 a ferry, and many refugees were also by the place
18 of crossing. Without casting a glance at them,
19 however, the Japanese soldiers began to prepare to
20 cross to the opposite bank and decided to do so by
21 means of one big sailboat and six small four or
22 five-seater boats which were nearby. But as the
23 capacity to cross the river was so little, it was
24 decided that the 3rd Battalion only would be carried
25 across first, and beginning from the night of the

AKAGI

DIRECT

1 24th it took until the following morning. By this
2 time the enemy on the opposite bank had already
3 escaped, and there was no resistance or fighting at
4 all.

5 "5. I also crossed the river on the
6 morning of the 25th and after getting in touch with
7 the 3rd Battalion Commander MATSUZAKI entered the
8 fortress with a very small number of troops, which
9 had just finished crossing the river at this time,
10 fairly and properly and in regular ranks. Further-
11 more, at the time of entry, no battle took place and
12 not a shot was fired. The troops were composed and
13 orderly; no air to kill prevailed and the entry was
14 accomplished very tranquilly. As Commander HATA
15 strictly maintained military discipline and morals,
16 we strictly observed his orders even from before at
17 the entrance of the city such foreigners as Germans,
18 French, and Italians came to meet us. In order to
19 avoid trouble, we did not go through the British
20 concession and entered the city by another way
21 under the guidance of a French missionary. Accord-
22 ingly, there was no trouble whatsoever and we even
23 took up our lodgings in accordance with these people's
24 introductions. I understand that the above missionary
25

AGAKI

DIRECT

1 did much in caring for and protecting refugees at
2 Shanghai and Nanking also.

3 "6. As I mentioned above, the Japanese
4 forces tranquilly entered the fortress in good
5 order and it is not possible that such cruelties as
6 plunder, rape, killing and wounding could have been
7 done after this entry. Accordingly, I did not ever
8 see even one corpse or the like inside the city.
9 The majority of the citizens of the city did not run
10 away and apparently only locked up their doors. And
11 not long after the entry they reopened their shops
12 and began doing business. Since conditions were
13 like this, the foreigners resident there were
14 favorably disposed towards the Japanese forces. In
15 the occupation of Hankow the navy took charge of
16 occupaying the river side area, the Japanese, French
17 and British concessions area, and the army took over
18 the airfield and the western area of Hankow.

19 "At this time more than 1500 or 1600
20 Chinese ships having a full load of Chinese were
21 sailing all over the Yangtze-kiang with identifi-
22 cation marks of neutral and foreign countries. Thus,
23 I think it was absolutely impossible that butchery
24 could have been openly committed on the banks of the
25 Yangtze-kiang in full view of the public."

AKAGI

DIRECT

Dated, "Jan. 31, 1947."

Your witness.

THE PRESIDENT: From my colleagues this morning and yesterday afternoon I have heard many adverse comments on the length of these affidavits. They certainly are unduly prolix. And others of my colleagues think that this particular subject matter is being enlarged too much. The evidence is really repetitive. I make those comments for the guidance of counsel, and not for the mere sake of making them.

MR. LOGAN; I can assure the Tribunal these affidavits were prepared, the defense having in mind the voluminous affidavits and documents that were submitted by the prosecution on the atrocity phase of their case.

THE PRESIDENT: Another Member of the Tribunal observes that the affidavits are directed to disprove matters not alleged.

MR. LOGAN: If the Tribunal please, I am sure we will abide by the decision of the Tribunal if at any time this becomes cumulative; but we have in mind count 47 of the Indictment in which the prosecution has alleged -- and there must be some evidence on it -- of the alleged slaughter that

1 took place at Hankow.

2 THE PRESIDENT: The prolixity is to be
3 found largely in the details of the movements of the
4 Japanese forces.

5 MR. LOGAN: We shall be guided accordingly,
6 your Honor.

7 THE PRESIDENT: Brigadier Quilliam.

8 BRIGADIER QUILLIAM: May it please the
9 Tribunal, the prosecution does not wish to cross-
10 examine this witness, but it is desired to say in
11 connection with the evidence given by this witness
12 and the other witness, other witnesses in connection
13 with the taking of Hankow, that the whole of the
14 prosecution evidence is contained in the evidence of
15 the witness Dorrance, which appears in the transcript,
16 your Honor, at page 3390.

17 MR. LOGAN: May this witness be released
18 on the usual terms, your Honor.

19 THE PRESIDENT: He is released accordingly.

20 (Whereupon, the witness was
21 excused.)

22 MR. LOGAN: May the witness, OYAMA, Fumio,
23 be called to the stand.
24
25

- - -

OYAMA

DIRECT

1 F U M I O O Y A M A, called as a witness on be-
2 half of the defense, being first duly sworn,
3 testified through Japanese interpreters as
4 follows:

5 MARSHAL OF THE COURT: Mr. President, a
6 check with the witness reveals that this witness
7 has testified in this case previously.

8 THE PRESIDENT: You are still under your
9 former oath, Witness.

10 DIRECT EXAMINATION

11 BY MR. LOGAN:

12 Q What is your name and address?

13 A My name, OYAMA, Oyao; my address, No. 8,
14 Nagata-cho, 1 Chome, Chiyoda-ku, Tokyo.

15 Q Will you examine defense document 347,
16 which is now being handed to you, and tell us if that
17 is your signature and seal affixed thereto?

18 A This is my affidavit.

19 Q Are the statements contained in that affi-
20 davit accurate and true?

21 A Yes.

22 MR. LOGAN: I offer in evidence defense
23 document No. 347.

24 THE PRESIDENT: Mr. Comyns Carr.

25 MR. COMYNS CARR: The prosecution objects

1 to paragraphs 3, 4, and 6 of this affidavit on the
2 ground that they are based upon documents not pro-
3 duced, and in the case of paragraph 6 not attempted
4 to be accounted for; in the case of paragraphs 3 and
5 4, attempted but in our submission unsuccessfully.
6 Paragraph 6 is based upon reports not produced,
7 which reports are alleged to have contained the
8 contents of written instructions, also not produced.
9 With regard to paragraphs 3 and 4, there is an
10 attempt in the last paragraph, subparagraph of 4,
11 to account for the documents by saying that although
12 they were formerly preserved in the War Ministry
13 they were entirely burnt at the close of the war.
14 But if your Honors will look at paragraph 2 you will
15 see that the witness left the War Ministry in March,
16 1945, and was therefore not there at the close of
17 the war. If documents are to be accounted for on
18 the ground that they were burnt at the close of the
19 war the prosecution desires to have the opportunity
20 of cross-examining somebody who can say, depose to
21 that fact of his own knowledge and can be asked as
22 to the reasons, particularly as prosecution exhibit
23 2001 consists of a few of the orders for this de-
24 struction of documents at the end of the war.

25 THE PRESIDENT: Mr. Logan.

OYAMA

DIRECT

1 MR. LOGAN: I submit, your Honor, that
2 this document taken as a whole fully accounts for
3 all the documents mentioned therein, and if there
4 is any question that this witness, who I understand
5 was also in the Legal Section after the war in Tokyo,
6 if there is any question that he is not telling the
7 truth that these documents were burnt, I suggest
8 that the proper time to bring that out would be
9 on cross-examination, not by bringing some other
10 witness here for the prosecution to examine. On
11 several occasions during the prosecution's case
12 they made capital out of the fact that some docu-
13 ments were burnt and, as Mr. Carr just says now,
14 they even found orders directing that they be burnt.
15 There is no question about it. A fair reading of
16 this affidavit discloses exactly what this witness
17 has in mind with regard to those affidavits, and no
18 objection is made by the prosecution as to material-
19 ity and relevancy, and I ask that it be accepted
20 for whatever probative value it may have. I might
21 also add, if the Tribunal please, it is my recol-
22 lection that the prosecution did produce evidence
23 that these documents were burnt, and I cannot see
24 what effect it would have in calling another witness
25 here to prove the same fact twice.

OYAMA

DIRECT

1 THE PRESIDENT: The Court requires a con-
2 vincing explanation of the absence of any document
3 the contents of which it is endeavoring to prove.
4 The explanation so far is not convincing. Why were
5 the documents which were issued in China burned in
6 Tokyo? Why were these documents burned at all,
7 seeing they are in favor of the defense? We
8 assume the only documents burnt were those which would
9 compromise the accused, or I should say the Japanese
10 Government, including, of course, military secrets.

11 MR. LOGAN: Those are questions, if your
12 Honor please, I think that could properly be asked
13 of this witness on cross-examination. He has made
14 the statement here they were burnt. I cannot see
15 what other further positive statement the witness
16 could make as to the absence of a document than to
17 state they were burnt. If there is any question
18 about it the prosecution can ask him on cross-
19 examination.

20 MR. COMYNS CARR: Your Honor, the prosecu-
21 tion has not given evidence that these particular
22 documents were burnt.

23 THE PRESIDENT: Why should the Japanese
24 Government have burnt those documents? That is what
25 we cannot understand.

OYAMA

DIRECT

1 MR. LOGAN: As I state, your Honor, there
2 is a positive statement they were burnt. That dis-
3 poses of it. If there is any question about it
4 they can properly bring it out on cross-examination
5 of this witness. The document should not be re-
6 jected because he makes a positive statement that
7 they were burnt.

8 I would like to clear up the statement
9 made by the Tribunal they can't understand why
10 these documents were burnt by the Japanese Govern-
11 ment. It may very well be these were burnt in
12 bombing raids. The witness would know the answer
13 to that.

14 THE PRESIDENT: Burnings and bombings are
15 different processes, and are generally so stated.

16 MR. LOGAN; I might say to the Tribunal
17 that in traveling to and fro to this building every
18 day I am sure we all see mute evidence of what hap-
19 pened to the buildings in which these documents were
20 housed.

21 THE PRESIDENT: But look at the large
22 number of documents that survived. We know that.

23 MR. LOGAN: They were not all retained in
24 Tokyo, I understand, your Honor.

25 THE PRESIDENT: An immense number were.

1 Perhaps you should ask us to stand this
2 witness down, as you did before, Mr. Logan.

3 MR. LOGAN: I would like to have a ruling
4 on this affidavit, if your Honor please. I don't
5 think there can be any presumption, if the Tribunal
6 please, that these documents were deliberately
7 burnt in view of the statement in this affidavit,
8 and I think the mere statement they were burnt
9 properly answers the absence of the documents, and
10 that is all we have been asked to do.

11 THE PRESIDENT: These are matters of
12 vital importance. We are not insisting upon the
13 observance of the strict technical rule.

14 We will recess for fifteen minutes.

15 (Whereupon, at 1045, a recess was
16 taken until 1100, after which the proceed-
17 ings were resumed as follows:)
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NOTE:

The attached pages are corrected pages and should be substituted for the corresponding pages in the record.

~~think there can be any presumption~~

5 please, that these documents were deliberately
6 burnt in view of the statement in this affidavit,
7 and I think the mere statement they were burnt
8 properly answers the absence of the documents, and
9 that is all we have been asked to do.

10 THE PRESIDENT: These are matters of
11 vital importance. We are not insisting upon the
12 observance of the strict technical rule, merely.

13 We will recess for fifteen minutes.

14 (Whereupon, at 1045, a recess was
15 taken until 100, after which the proceeding-
16 ings were resumed as follows:)
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1 Perhaps you should ask us to stand this
2 witness down, as you did before, Mr. Logan.

3 MR. LOGAN: I would like to have a ruling
4 on this affidavit, if your Honor please. I don't
5 think there can be any presumption, if the Tribunal
6 please, that these documents were deliberately
7 burnt in view of the statement in this affidavit,
8 and I think the mere statement they were burnt
9 properly answers the absence of the documents, and
10 that is all we have been asked to do.

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12 vital importance. We are not insisting upon the
13 observance of the strict technical rule, merely.

14 We will recess for fifteen minutes.

15 (Whereupon, at 1045, a recess was
16 taken until 100, after which the proceeding-
17 ings were resumed as follows:)
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1 on the usual terms?

2 THE PRESIDENT: He is excused accordingly.

3 (Whereupon the witness was excused.)

4 MR. ROBERTS: We offer in evidence defense
5 document 1131, which is a statement emanating from
6 the Foreign Office concerning the attempt on the
7 part of Chinese censors to manipulate dispatches of
8 foreign correspondents and is intended to correct
9 the distortion of facts by the Chinese censors.

10 THE PRESIDENT: Brigadier Nolan.

11 BRIGADIER NOLAN: May it please the Tribunal,
12 we object to document 1131. It is, we submit, a
13 press dispatch of a kind that has been rejected on
14 numerous occasions by the Tribunal. It purports to
15 say what was in a dispatch and how it was altered by
16 the censors.

17 MR. ROBERTS: I think this press dispatch
18 objection is being slightly overused by the prosecu-
19 tion.

20 THE PRESIDENT: Press release.

21 MR. ROBERTS: Press release.

22 The certificate states it to be an exact
23 and true copy of an official document of the Japanese
24 Foreign Office, and it states certain facts with
25 reference to bombing of the Sincere Department Store.

1 THE PRESIDENT: By a majority, the Tribunal
2 upholds the objection and rejects the document.

3 It is too late now to take any other business
4 today.

5 "We will adjourn now until half past nine
6 Monday next.

7 (Whereupon, at 1555, an adjournment was
8 taken until Monday, 5 May 1947, at 0930.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in
3 session.

4 THE PRESIDENT: I refer to page 23,017 of
5 the record. As lines 12 to 18 inclusive were not in
6 evidence that part of the exhibit was not read and
7 should not appear in the transcript.

8 All of the accused are present except the
9 accused TOJO, who, with the Court's permission, is
10 interviewing his counsel outside the court room.

11 Colonel Smirnov.

12 COLONEL SMIRNOV: Thank you, your Honor.

13 - - -

14 R I P P E I O G I S U, called as a witness on
15 behalf of the defense, resumed the stand and
16 testified through Japanese interpreters, as
17 follows:

18 CROSS EXAMINATION

19 BY COLONEL SMIRNOV: (Continued)

20 Q From what post were you transferred to the
21 post of the Commander of the 6th Army?

22 A I was transferred from my former position as
23 Chief of the 13th Division in Central China to be
24 Commander of the 6th Army in Manchuria.

25 Q If we shall believe the list of your career

1 called the Arshan-Gol River.

2 MR. BLAKENEY: If the Tribunal please, I
3 think whatever demonstration the witness is making
4 should also be made to the bench.

5 THE PRESIDENT: There is no need for him
6 to point out any name. He can read the name,
7 and he can underline it, if necessary.

8 MR. BLAKENEY: Unless the prosecution is
9 willing to concede that the difference pointed out
10 by the witness exists, I think I must insist that
11 it be shown to the Tribunal if it is going to be a
12 matter in dispute.

13 THE PRESIDENT: If you think we will be
14 better informed as a result, let us see that. He
15 said there was a difference in words. Let him point
16 out the words. What more can he do?

17 COLONEL SMIRNOV: Your Honor, I intended to ask
18 the same, but a little later on; but previous to the
19 time the map is shown to the bench I would like to
20 ask your direction to determine the names of the places
21 through which the border line passes according to the
22 agreement between Molotov and TOGO.

23 THE PRESIDENT: One difficulty at a time.
24 That is another matter entirely. Let us clear up this
25 point about the alleged difference between the maps.

KASAHARA

CROSS

Q I remind you. I quote the second part of the document, second page of the English text. I quote:

"There must be many essentials for carrying out war against the Soviet Union, but the following are the most important.

"1. Necessity of Annihilating the Enemy.

"We need not expatiate on the necessity for a lightning war in view of its situation. But the far eastern territory of the Soviet Union is very far from its political and industrial centre, and Japan cannot extinguish the enemy altogether by mere occupation of that territory. Merely to defeat them in battle is not enough. By a war of annihilation, we can deliver a heavy psychological blow to the Soviet people and await, together with the measures mentioned in paragraph 3, their internal collapse. There is no alternative for us. Therefore, from the control of the anti-Soviet war down to the organization, equipment and training of troops, all must be carried out according to the great principle of a war of annihilation."

All that was written by you, Mr. Witness, was it?

A Yes, I wrote that.

Q Mr. Witness, didn't you plan also the following

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Logan. Have you any-
4 thing to add?

5 MR. LOGAN: Just this: that, in checking
6 the record in the prosecution's case, we find that
7 the witness KAWABE was called on October 14, 1946
8 wherein prosecution offered the affidavit saying,
9 "All of the secret and top-secret documents and rec-
10 ords of the General Staff had been burnt in Tokyo
11 during the time from August 13, 1945 until the day we
12 received from the Allied Powers the orders prohibiting
13 the burning of documents."

14 THE PRESIDENT: These were not secret.

15 MR. LOGAN: It is also said, "Among the docu-
16 ments burnt were documents of mobilization plans,
17 military operation plans, and the documents referring
18 to the guidance of the war, as well as records of
19 Supreme War Council."

20 I might say that there is nothing in this
21 affidavit we are offering to indicate whether they
22 were or were not secret documents. The witness could
23 probably tell us that.

24 There is also further evidence of the burning
25 of documents introduced by the prosecution on October

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1 18, 1946 through a witness, MIYAMA.

2 THE PRESIDENT: In the case of these army
3 documents, we should have a certificate from the
4 Japanese Demobilization Department. To be of any
5 use, the certificate would need to be a very full
6 certificate, giving a full explanation of what hap-
7 pened to the document or might have happened to it.
8 It is very easy to get that, and we should have that
9 at least.

10 MR. LOGAN: I might say that this affidavit
11 of the prosecution's witness, MIYAMA -- he was Chief
12 of the Correspondence Section of the 1st Demobiliza-
13 tion Bureau, and he said this on October 18, 1946,
14 on page 8076. He said this among other things:

15 "All the files of 1st and 2nd Departments of
16 Japanese General Staff bearing upon the planning of
17 war against the USSR The correspondence of
18 the General Staff and the War Ministry of Japan with
19 the Headquarters of Kwantung and Korean Armies on the
20 question of military preparation of Japan for a war
21 against the Soviet Union,"

22 He further stated that those documents were
23 not in the possession of the 1st Demobilization Bu-
24 reau, and I might add that this present witness was
25 also from the 1st Demobilization Bureau. It may very

1 well be that several questions addressed to him
2 would clear up this entire matter. He certainly was
3 in a position to know.

4 THE PRESIDENT: It has been suggested that
5 the rules stated by me were stated too broadly, but
6 I have heard no contention to to that effect from the
7 defense. If the rule binds only parties to documents,
8 it is news to me.

9 MR. LOGAN: It would be my contention, if
10 the Tribunal please, that, where a witness was en-
11 deavoring to quote from a document which he couldn't
12 account for and trying to quote it accurately, then,
13 I think, there would be some justification for a rule,
14 if that witness was particularly involved in the
15 document in question, unless he could give a very
16 satisfactory explanation as to why the document was
17 not produced. But here we have a situation -- he is
18 accused and charged with participating in alleged
19 wars which took place since 1928.

20 THE PRESIDENT: We'd be guided by the cir-
21 cumstances of each case, no doubt, Mr. Logan.

22 MR. LOGAN: That's right.

23 THE PRESIDENT: But what are they here?

24 MR. LOGAN: Well, the circumstances here are
25 as stated in this affidavit. He says that they were

OYAMA

DIRECT

1 entirely burned at the close of the war. Now, this
2 Tribunal has often said that we are not bound by
3 technical rules of evidence. If we are going to be
4 found by words which we put in our affidavits with-
5 out putting in two or three paragraphs of explanation
6 of who burned them, when they were burned, and pro-
7 duce fragments of the ashes of the document -- I
8 don't know what better proof we could produce than
9 this man here who testifies that they were burned.

10 THE PRESIDENT: I suggest we should have
11 the evidence of the custodians of the documents who
12 are here in Tokyo.

13 MR. LOGAN: This witness, if the Tribunal
14 please, was head of the Legal Section. I think he
15 is the best witness we could possibly have on it.
16 Frankly, I cannot understand the reluctance of the
17 prosecution to cross-examine him on it to find if
18 he is telling the truth or not.

19 THE PRESIDENT: He was head until March,
20 1945, but that was long before the close of the war.

21 MR. LOGAN: I understand he became head of
22 the Legal Section of the 1st Demobilization Bureau
23 immediately upon the close of the war.

24 THE PRESIDENT: Well, I don't know. Perhaps
25 we should receive his affidavit subject to the proof

OYAMA

DIRECT

1 of the document or the accounting for its absence in
2 the ordinary way.

3 Have you any objection to that course, Mr.
4 Carr?

5 MR. COMYNS CARR: It is entirely -- if the
6 Tribunal please, I was just going to point out this:
7 that the order, exhibit 2,001, for the burning of
8 document is confined to "such documents as will be
9 harmful when they fall into the hands of the enemy,"
10 and proceeds to give examples of those documents
11 which should be burned and those which should not.

12 We are confronted with a situation in which
13 witness after witness comes forward to testify to
14 the extremely harmless and, indeed, meritorious
15 character of the contents of documents not produced
16 and alleged to have been burned.

17 THE PRESIDENT: In the face of that order,
18 it is going to be difficult for this witness to es-
19 tablish that these particular documents were burned,
20 but he may be able to do so. The prospect is not
21 too bright.

22 CLERK OF THE COURT: Document No. 347 will
23 receive exhibit No. 2560.

24 (Whereupon, the document above re-
25 ferred to was marked defense exhibit No.

~~2560~~ and received in evidence.)

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LIRECT

1 MR. LOGAN: I will now read defense
2 document 347, being exhibit 2560, the affidavit
3 of OYAMA, Fumio, beginning with paragraph 2:

4 "As to my career, I held the position of
5 Chief of the Army Judicial Affairs Bureau from
6 December 1933 to March 1945, ranking as Army Ju-
7 diciary Lieutenant-general since April 1, 1942.

8 "The War Ministry, regardless of peace or
9 war, always expected Army Courts Martial to be
10 strictly fair in meting out punishments, and at
11 every available opportunity issued notes of in-
12 structions to that purport. As regards the prose-
13 cution of Courts Martial, the War Ministry never
14 made any unjust or unfair interference, nor did it
15 ever take any steps to exert restriction or pressure
16 on it. In particular, the War Ministry issued in-
17 structions over and over again exhorting Courts
18 Marshall to deal with crimes relating to military
19 discipline or morality with the strictest punishments.

20 "Even after the outbreak of the China Inci-
21 dent, the aforementioned policy was never altered,
22 but in time of war it was feared that crimes relating
23 to military discipline or morality were apt to in-
24 crease. Therefore, the greatest care was taken in
25 this respect. Deeming it necessary to make stricter

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LIRECT

1 MR. LOGAN: I will now read defense
2 document 347, being exhibit 2560, the affidavit
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5 Chief of the Army Judicial Affairs Bureau from
6 December 1933 to March 1945, ranking as Army Ju-
7 diciary Lieutenant-general since April 1, 1942.

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9 war, always expected Army Courts Martial to be
10 strictly fair in meting out punishments, and at
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21 dent, the aforementioned policy was never altered,
22 but in time of war it was feared that crimes relating
23 to military discipline or morality were apt to in-
24 crease. Therefore, the greatest care was taken in
25 this respect. Deeming it necessary to make stricter

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DIRECT

1 the Courts Martial of the crimes in the field
2 particularly, the War Ministry had issued repeated
3 instructions exhorting the strict enforcement of
4 their functions, and expected thorough accomplish-
5 ment thereof.

6 "Although the notes communicating such
7 instructions had formerly been preserved in the
8 War Ministry, they were entirely burnt at the close
9 of the war. To our regret, therefore, the original
10 texts thereof are not now in existence, but what I
11 have stated above is a stern reality with which
12 those who received the notes of instruction in
13 question ought to be well acquainted.

14 "The Japanese Army Penal Law had formerly
15 contained no provision relating to rape and it was
16 treated in conformity with the general Penal Law,
17 as constituting a crime in case its victim should
18 bring forward a complaint it. Such treatment of
19 this offense, however, was insufficient for en-
20 forcing military morality, and, therefore, with the
21 enactment of Law, No. 3 on February 20, 1942, the
22 Army Penal Law was revised, making rape a non-
23 complaint-based crime and its punishment was also
24 increased. When rape committed at the front was
25 treated as a complaint-based crime there were many

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1 cases where it was difficult to secure complaints
2 from ~~the~~ victims thereof. So long as there were
3 no complaints from the victims no punishment was
4 possible and consequently a thorough enforcement
5 of morality could not be expected. It was for this
6 reason that the Law was revised classifying rape
7 as a non-complaint-based crime with a view to a
8 stricter control over it.

9 "General HATA was a man who paid extremely
10 close attention to military discipline and morality.
11 I am aware of the fact that while Commander of the
12 China Central Expeditionary Army or Supreme Com-
13 mander of the China Expeditionary Army, General
14 HATA made reports to control quarters on the Of-
15 ficial instructions, oral and written, given him
16 for the strict maintenance of military discipline
17 and morality."

18 "Signed "24th day of December 1946."
19

20 Your witness.
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1 THE PRESIDENT: Mr. Comyns Carr.

2 MR. COMYNS CARR: Your Honor, this witness has
3 testified before on page 19,617 of the record on the
4 subject of the finding of the bodies of Chinese soldiers
5 near the railway in Mukden.

6 THE PRESIDENT: He was one of an investigating
7 team, I recollect.

8 MR. COMYNS CARR: Yes, your Honor.

9 CROSS-EXAMINATION

10 BY MR. COMYNS CARR:

11 Q Mr. OYAMA, what did you do after March, 1945?

12 A On the first of April, 1945, I received a
13 command and was placed on the reserve list the follow-
14 ing day. In accordance with this order I resigned
15 from my position and went back to my home country in
16 Okayama Prefecture. On the 8th of November, 1945, I
17 was again called to the service of the War Ministry
18 as Chief of the Legal Affairs Bureau and I arrived in
19 Tokyo on November 11 to take the post. Since that
20 time I served as I did once before as Chief of the
21 Legal Affairs Bureau of the War Ministry, and later
22 continued in the same post when the War Ministry was
23 reorganized and made into the First Demobilization
24 Bureau. And since the reorganization of this ministry
25 into the First Demobilization Bureau I have and still

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am serving as Chief of the Legal Research Section.

1 Q So you were not in Tokyo at the close of the
2 war?

3 A No, I was not.

4 Q Who told you that these documents which you
5 refer to in paragraph 4 of your affidavit had been
6 burnt at the close of the war?

7 A At the time I drafted this affidavit in
8 December last year, I ordered one of my subordinates
9 at that time to make a study, an investigation, into
10 this matter. At that time this subordinate of mine,
11 a secretary, after making a research on the matter said
12 that the related documents had been burnt at the time --
13 at the termination of the war.

14 Q What is his name?

15 A KOMINE, Chozaburo.

16 Q Did you ask him if his searches disclosed
17 why they had been burnt?

18 A I did not hear the reason. I was told that
19 these documents were burnt, together with other docu-
20 ments.

21 Q Now you were head of this bureau which, I
22 suppose, controlled the whole of the army judicial
23 affairs, did not it?

24 A I cannot say "all" as chief of the Legal Affairs
25

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1 Bureau. The Legal Affairs Bureau handled principally
2 military judiciary matters or judicial matters. That
3 is, the Chief of the Legal Affairs Bureau handled
4 principally military judicial matters.

5 Q Now, if the documents that you are speaking
6 of were so harmless in their contents as you assert,
7 can you explain why they should have been burnt?

8 A As I have said before, in as much as I made
9 no investigation into the reason why these documents
10 were burnt I could not reply in any positive manner
11 to the question just asked by you.

12 Q With regard to the documents mentioned in
13 paragraph 6 of your affidavit, namely, General HATA's
14 reports to Central Quarters, you don't there say any-
15 thing as to what has become of those. What has become
16 of them?

17 A Field reports are made and sent to the War
18 Ministry and in these -- and among these reports there
19 are many relating to military discipline and public
20 morals on the first page of these reports. What I
21 have referred to in this paragraph in my affidavit
22 is taken from the first page or at the top of the
23 reports from the field amongst matters relating to
24 military discipline and morals.

25 Q Where are the reports?

OYAMA

CROSS

1 A These reports from the field cover many
2 various items and I don't know where these reports are
3 presently, but when these reports were submitted to
4 the War Ministry they were circulated among the various
5 bureaus concerned. It is at such a time that I saw
6 these reports.

7 Q Did you make any inquiries before you swore
8 this affidavit as to where those reports were?

9 A As I have said before, I had the inquiry
10 made by my subordinate, Secretary KOMINE in my section.

11 Q But you do not say in your affidavit anything
12 about what happened to these reports. Do you say that
13 you made the same inquiry about them?

14 A Yes.

15 Q Why didn't you say so?

16 A Well, I should say that would be insufficient
17 explanation on my part.

18 Q Any more insufficient than it is in relation
19 to the other documents?

20 MR. LOGAN: I object to this line of question-
21 ing by the prosecutor, if the Tribunal please. At
22 the time this affidavit was sworn, December 1946, we
23 did not know there would be any rule requiring these
24 witnesses to set forth where these documents were, and
25 it is merely arguing with the witness.

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CROSS

1 THE PRESIDENT: If Mr. Carr had not asked
2 those questions, the Court intended to do so. We
3 proposed to ask, were the instructions issued to
4 divisions whose headquarters were in Japan, and, if so,
5 was application made to those headquarters for copies?

6 Well, witness, did you ask the divisions
7 that received those instructions for those instruc-
8 tions?

9 THE WITNESS: No such inquiry was made, but
10 I do not think that such copies are in the possession
11 of such divisions.
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1 Q Do you know that the burning order was
2 issued to all unit headquarters and area commands,
3 as well as to the War Ministry?

4 THE PRESIDENT: To burn what documents, Mr.
5 Carr?

6 MR. CARR: To burn such documents as will
7 be harmful when they fall into the hands of the
8 enemy.

9 MR. COMYNS CARR: Language Division, I
10 am reading from the first paragraph, page 2, ex-
11 hibit 2001.

12 (Reading) "For example, documents concern-
13 ing foreign affairs, counter-intelligence, thought,
14 peace preservation, etc., and materials by which
15 national power may be estimated and secret history
16 (such as February 26th Incident) must be destroyed
17 as soon as possible.

18 "On the other hand, code-books, register
19 of M. P. personnel, documents concerning undisposed
20 intendance and general affairs, etc., should not be
21 destroyed until they are of no use. Documents
22 especially desirable to preserve for future use
23 (for example, black-list of leftists, etc.) should,
24 as a suggested plan, be ingeniously moved to
25 another place."

OYAMA

CROSS

1 Together with that document there went
2 out another one giving detailed instructions as
3 to how the burning and hiding were to be done.

4 THE PRESIDENT: Do you know of any such
5 order, Witness?

6 THE WITNESS: Because of the fact that I
7 wasn't in an active position in the War Ministry
8 and rather was retired in my native place, I don't
9 know whether any such order was issued, nor the
10 contents of such orders if issued.

11 THE MONITOR: At the end of the war.

12 THE PRESIDENT: He is hardly a competent
13 witness on this question of what happened to these
14 documents.

15 BY MR. COMYNS CARR:

16 Q Did the files of instructions about courts
17 martial include instructions about the courts mar-
18 tial on Allied prisoners of war after 1941?

19 THE MONITOR: The witness said the ques-
20 tion is not clear. It will be repeated.

21 THE WITNESS: Instructions with regard
22 to courts martial were on general matters. Such
23 detailed concrete matters were not included in
24 these instructions. The main stress or emphasis in
25 those instructions or directives issued in connec-

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CROSS

1 tion with the court martial was with respect to the
2 maintenance -- rigid maintenance of military disci-
3 pline and morals within the Japanese army.

4 Q You say in paragraph 3 that the War Min-
5 istry, regardless of peace or war, always expected
6 army courts martial to be strictly fair in meting
7 out punishments. Do you know that a man named
8 Roderick Graham Wells was sentenced by one of your
9 courts martial to twelve years imprisonment with
10 hard labor for spreading a rumor, on the 2nd of
11 March, 1944, while you were head of the Legal
12 Bureau? Do you consider that fair?

13 A The case just indicated by you I don't
14 recall at all.

15 Q Was it part of your duty to review the sen-
16 tences passed upon prisoners at court martials?

17 A Sentences given at courts martial, that
18 is, reports or documents pertaining to sentences
19 given at courts martial are reported to the Ministry
20 of War and are circulated to the department concerned
21 by the Ministry of War, and on such an occasion I
22 have opportunity to see such documents. When we
23 note that the sentence happens to be in violation
24 of any law, that it wasn't applying the law properly
25 and correctly, we would point out that matter and

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1 endeavor to make a correction.

2 Q Do you know that under the Geneva and
3 Hague Conventions the maximum sentence was thirty
4 days?

5 A In what kind of cases? It depends upon the
6 case.

7 Q In a case such as that.

8 A I should like to have that repeated more
9 concretely.

10 Q Do you know that for an offence such as
11 I have described the maximum sentence would be
12 thirty days under the Hague and Geneva Conventions?

13 A What kind of offence? because I think the
14 sentences vary in accordance with the type of offence.

15 Q I have already told you the offence was
16 described in the charge as spreading a rumor.

17 THE PRESIDENT: Mr. Logan.

18 MR. LOGAN: I submit, if the Tribunal
19 please, that the prosecution has not set forth
20 sufficient facts of the offence to give the witness
21 an opportunity to give his opinion on the question
22 that has been asked. The mere spreading of rumor
23 does not mean anything. It should be more
24 specific.
25

MR. COMYNS CARR: That was the charge.

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CROSS

1 THE PRESIDENT: Did you tender any records
2 dealing with the Wells case?

3 MR. COMYNS CARR: Exhibit 1998 and Mr.
4 Wells' own affidavit, exhibit 1666, your Honor.

5 THE PRESIDENT: The particulars seem to me
6 to be sufficient to enable the witness to answer.

7 MR. COMYNS CARR: Especially as he certified
8 the correctness of exhibit 1998, your Honor.

9 THE PRESIDENT: You had better draw his
10 attention to that and get his answer.

11 We will adjourn now until half-past one.

12 (Whereupon, at 1200, a recess was
13 taken.)
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1 AFTERNOON SESSION

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3 The Tribunal met, pursuant to recess, at
4 1330.

5 MARSHAL OF THE COURT: The International
6 Military Tribunal for the Far East is now resumed.

7 THE PRESIDENT: Mr. Comyns Carr.

8 - - -

9 FUMIO OYAMA, called as a witness on
10 behalf of the defense, resumed the stand and
11 testified through Japanese interpreters as
12 follows:

13 CROSS-EXAMINATION

14 MR. COMYNS CARR: May the witness see
15 exhibit 1998, please?

16 (Whereupon, a document was handed
17 to the witness.)

18 BY MR. COMYNS CARR (Continued):

19 Q Is that a document which you certified as
20 being correct, Mr. OYAMA?

21 A It does not seem that I have certified this
22 document.

23 Q Is the certificate attached to it?

24 A Yes, this is my signature.

25 Q Yes. And you have certified that it was made

OYAMA

CROSS

1 up from the official records of the First Demobili-
2 zation Bureau. What are the records from which it
3 was made up?

4 A The records which became a basis of this
5 document is in the custody of the Legal Research Section
6 of the First Demobilization Bureau.

7 Q What sort of a document is it? How much
8 information does it give?

9 A Only statistical tables and charts are all
10 that remain now.

11 Q Then the documents which showed the details
12 of those cases were amongst those burned, were they?

13 A I so think.

14 Q Do you think that that may have been why
15 all the files of your department were burned?

16 A My subordinate secretary in my section told
17 me upon inquiry that these were not the only ones.
18 Other documents also were burned.

19 Q Coming back to the case of Wells -- you will
20 find that is the eighth from the end of the document.
21 Look at the entry relating to Wells. Do you say you
22 don't remember anything about his case?

23 A The fact that Wells was sentenced appears on
24 this document. However, the contents thereof are
25 unknown to me.

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22 don't remember anything about his case?

23 A The fact that Wells was sentenced appears on
24 this document. However, the contents thereof are
25 unknown to me.

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1 Q Now, that document, 1998, consists of
2 eighteen pages in the Japanese, doesn't it? You so
3 certified.

4 A Yes.

5 Q And about ten names to a page?

6 A Yes.

7 Q And I suggest to you that every one of them
8 relates to a sentence which was illegal under the
9 Conventions.

10 A Regarding that, I should state that sentences
11 are made in accordance with Japanese law. It is cus-
12 tomary in Japanese courts-martial not to apply such
13 conventions as just mentioned by you, and I think
14 that sentences listed in this table are not in viola-
15 tion of Japanese law. And I believe that fair sen-
16 tences were granted at these -- were rendered at
17 these courts-martial in accordance to law.

18 Q Did you, when you came to review the sen-
19 tences, decide that you would not apply the Conven-
20 tions?

21 A May I have the question repeated?

22 THE PRESIDENT: The Japanese court reporter
23 will repeat.

24 (Whereupon, the question was read by
25 the Japanese court reporter.)

OYAMA

CROSS

1 A I had no authority whatsoever to make any
2 such decision.

3 Q According to Japanese military law, is a
4 prisoner entitled to be told the charge against him?

5 A The contents of any charge or indictment is
6 usually told the defendant.

7 Q Why only usually?

8 A Always, I mean.

9 Q Do you know that it was not told to
10 Lieutenant Wells or to the man whose name appears
11 immediately above his on the list, Captain Matthews,
12 although they asked to be told?

13 A I do not think that was the case. I don't
14 believe that such was the case.

15 Q Is a prisoner at a Japanese court-martial
16 entitled to somebody to defend him?

17 A The services of counsel for the defense is
18 permitted in peacetime in Japanese courts-martial.
19 However, at special courts-martial in wartime, defending
20 counsel is not permitted. However, this is not appli-
21 cable merely to prisoners of war, but to all Japanese
22 officers and men and other ordinary persons who are
23 accused.

24 Q Is it permitted to the Kempeitai under
25 Japanese law to torture a prisoner in order to make

OYAMA

CROSS

him confess?

1 A The use of torture was not permitted, not
2 only to the Kempeitai, but in all cases when inves-
3 tigation of the accused is carried out.
4

5 Q Is it permitted, in Japanese military law,
6 for a prisoner to be forced to sign a statement with-
7 out its being read or explained to him?

8 A What do you mean by "to take an oath" or to
9 "make a sworn statement"?

10 Q I didn't say anything about a sworn statement.
11 I said to be forced to sign a statement.

12 A In the event a statement is made, that state-
13 ment is read to the party before it is signed.

14 Q If a man is sentenced to death by a court-
15 martial, under Japanese military law is the reviewing
16 authority supposed to have an opportunity of reviewing
17 the sentence before it is carried out?

18 A In principle, when a sentence of death is
19 executed, it requires the authorization of the Minister
20 of War. However, the commander-in-chief of an army
21 is permitted, in the place of the War Minister, to
22 give such authorization in wartime at a special courts-
23 martial.

24 Q What is a special courts-martial?

25 A These are courts-martial established within

OYAMA

CROSS

1 army units, not in peacetime but in wartime or in
2 times of incidents. All courts-martial established
3 in the field are all special courts-martial.

4 Q Was Korea considered to be in the field in
5 1943?

6 A I do not think Korea was considered as a
7 field at that time. However, I think a special courts-
8 martial was established there because it was during
9 wartime.

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1 Q Where is Sandakan Camp, do you know?

2 A I have heard the name Sandakan, but I don't
3 know whose territory it is nor where it is located.

4 Q I see. Well now, did you review the sentence
5 passed upon Captain Matthews?

6 A I have no recollection whatsoever with regard
7 to such concrete matters.

8 Might I add in connection with reviewing that
9 sentences reported back from the field are all copies
10 of the sentence, and all that is known to us is the
11 contents of the sentence itself inasmuch as it is only
12 the copy of the sentence which is transmitted to us and
13 not the records in connection with that particular case.
14 However, there have been many cases of such sentences,
15 or copies of sentences being sent to the central authori-
16 ties from the field; however, they are often and fre-
17 quently lost en route as a result of airplane accidents,
18 and also the sinking of ships.

19 Q This one reached you because it is in your
20 records, didn't it?

21 A Yes, the table remained. However, in connec-
22 tion with this chart it happened to be in the possession
23 of an officer, one of the officers in charge who hap-
24 pened to receive a distribution of the copy thereof.

25 Q Do you know that Captain Matthews was shot

OYAMA

CROSS

1 within ten minutes of the decision of the court-martial
2 being given?

3 A I do not know whatsoever.

4 Q If that was so, neither you nor the commanding
5 officer could very effectively review the sentence,
6 could you?

7 A Yes, that would be the result.

8 Q And it would be the duty of the person who
9 ought to review it to take some steps, wouldn't it, to
10 punish those responsible?

11 A With regard to such concrete cases unless I
12 know all the circumstances and the facts of the case,
13 it is very difficult for me to pass any judgment.

14 Q Assume what I have put to you, that a man
15 was sentenced to death by a court-martial and shot
16 within ten minutes so that nobody could review the
17 sentence. Wouldn't it be the duty of the person who
18 ought to have reviewed the sentence to punish those
19 responsible?
20

21 A I do not think that there could be any case
22 of a sentence being carried out within such a short
23 time.

24 Q Answer the question. Suppose it did happen.
25 Answer the question.

A If an unlawful act is committed, certain strict

OYAMA

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1 measures -- it is only natural that strict measures
2 would be taken. By measures I mean that it would be
3 punishment, criminal punishment at times, depending on
4 the degree of the offense.

5 Q So far as you know were any such measures
6 taken arising out of the case of Captain Matthews?

7 A I have never known that there was such a case.

8 Q Now, in paragraph 4 of your affidavit you
9 speak of courts-martial of Japanese offenders arising
10 out of the China Incident. What was the highest rank
11 of any officer who was punished by court-martial in
12 connection with the outrages at Nanking?

13 A I do not recollect at the present moment.

14 Q Do you remember whether any officer was so
15 punished?

16 A I am even unfamiliar with the so-called Nanking
17 case.

18 Q But you were head of the Army Judicial Affairs
19 Bureau in 1937, were you not?

20 A Yes, I was.

21 Q Are the records of punishments in connection
22 with that matter still in your department?

23 A I do not know of any report made in connection
24 with the so-called Nanking outrages.

25 Q You mean to say that there were no courts-martial

OYAMA

CROSS

1 reported to you arising out of misconduct of Japanese
2 troops in Nanking?

3 A Not only that, but it isn't limited to Nanking,
4 but to all cases of a like nature reports of courts-
5 martial have been made. And what I said to you was
6 that among such reports I have not noticed or ever
7 recall noticing anything under the item, or under the
8 title the so-called Nanking Incident.

9 Q Or anything which you connected with it
10 which you found to have arisen out of it?

11 A I recall that of receiving reports of courts-
12 martial with regard to officers and men of the Japanese
13 forces for offenses committed in the Nanking area.
14 However, I have no recollection of any officers being
15 punished by courts-martial in connection with, as you
16 call, cases of outrage.

17 Q A defense witness, Mr. HIDAKA has told us
18 that the complaints with regard to those outrages
19 were forwarded to the War Ministry. Did they come to
20 you?

21 A Such documents are not to be found in my
22 department because this is outside of the scope of the
23 jurisdiction of the Legal Affairs Bureau.

24 Q If there were complaints of criminal acts
25 committed by Japanese troops, wasn't it the business

OYAMA

CROSS

1 of the Legal Affairs Bureau to deal with them?

2 A No.

3 Q Do you know that there were large numbers of
4 complaints of rape in Nanking by Japanese soldiers?

5 A May I have some explanation made of the word
6 "complaint" as you use it?

7 Q Do you know that there were reports from the
8 International Committee in Nanking forwarded to the
9 War Ministry in 1937 relating, amongst other things,
10 to a very large number of complaints of rape?

11 A I do not know that such protests were made
12 or came to Japan. This is not a matter under the
13 charge of the Legal Affairs Bureau. However, if there
14 are any cases of criminal offense it is customary for
15 documents pertaining thereto to be circulated to the
16 Legal Affairs Bureau but I have no recollection that
17 such documents were circulated to my office at that
18 time.

19 Q If such documents were circulated to you,
20 wasn't it your duty to order investigations to be
21 made and prosecutions to take place?

22 A That was done by the army in the field.
23 That is not a matter to be ordered directly by the
24 central authorities. However, if such cases of offense
25 actually occurred then the Minister of War or the Chief

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1 of the Army General Staff would issue orders to
2 commanders in the field to make more rigid and
3 strict the maintenance of military discipline and
4 to take proper steps in the punishment of those who
5 commit offense. However, it is only in cases of
6 major -- matters of major importance and it is not
7 customary for the War Ministry or the Army General
8 Staff to issue such instructions or orders each time
9 some case occurred.

10 Q You say in paragraph 5 of your affidavit
11 that on February 20, 1942 the army penal law was re-
12 vised with regard to rape because the previous law
13 had been found insufficient. How did it come to your
14 knowledge that it was insufficient?

15 A What I mean by insufficient is that before
16 the revision of the army penal law was made it was
17 all complaint-based. It was considered complaint-
18 based crime and therefore there was no means of
19 dealing properly with any case without a complaint
20 being lodged.

21 Q But was not the necessity for a change of
22 the law according to you brought to your attention
23 because you knew that there had been great numbers of
24 cases of rape which had not been dealt with?

25 A Yes, it was known to us by reports from the

OYAMA

CROSS

1 field that there were many offenses, that is,
2 offenses and numerous cases of rape in the field;
3 and with regard to such cases of rape the central
4 authorities gave, issued orders that such cases should
5 be rigidly and severely dealt with.

6 Q And were not those numerous cases mostly in
7 China and particularly in Nanking?

8 A Not necessarily.

9 Q Where were they then?

10 A In China. Not only in Nanking but in other
11 areas of China there have been cases of offenders being
12 punished for such offense.

13 Q If there was some in Nanking why is it that
14 it took you five years to make up your minds to alter
15 the law?

16 A The revision of the complaint-based crime
17 to the noncomplaint-based crime was not made because
18 of any concrete cases occurring in Nanking. Such re-
19 vision was carried out because such offenses were com-
20 mitted up to that time in other areas in China as well.

21 Q And all that time, five years that war in
22 China had been going on, you had been content to leave
23 your penal code in the condition in which you say rape
24 could not be punished?

25 A I did not speak of that in that sense at all.

OYAMA

CROSS

1 Any revision is very difficult to make and it took
2 some years before any conclusion was reached to
3 effect any revision -- the motive for the revision
4 was made after some years after the matter had been
5 fully recognized.

6 Q One more question about the burning of
7 documents. Have any documents been burned since you
8 came back to the First Demobilization Ministry?

9 A I do not know of any case of documents
10 being burned after I returned to the First Demobiliza-
11 tion Ministry. However, I cannot say that that would
12 cover all documents because certain documents which
13 were considered to have been completely finished
14 business have been disposed of and such practices
15 go on even in peace time.

16 Q The document I have in mind is one called
17 the Top Secret War Diary of Imperial General Head-
18 quarters. Do you know that in October and November,
19 1945, there was a committee in your ministry investi-
20 gating allegations with regard to prisoners of war in
21 Burma and Siam and another making a similar investiga-
22 tion with regard to Malaya?

23 A I do not know whether there were committees
24 which dealt exclusively with certain areas as just
25 pointed out by you but there was a committee .

OYAMA

CROSS

1 investigating prisoners of war matters; that is to
2 say, there was in the First Demobilization Bureau
3 a research committee for prisoners of war affairs.

4 Q And do you know that their report which
5 is an exhibit in this case quotes verbatim from that
6 Top Secret War Diary?

7 A May I have that question repeated? It was
8 not clear to me.

9 MR. COMYNS CARR: Repeat it, Reporter,
10 please.

11 (Whereupon, the last question was
12 read by the official court reporter.)

13 A I have no knowledge whatsoever with regard
14 to such concrete instances or matters.

15 Q Haven't you been questioned about it by
16 officers of the IPS within the last two months?

17 A Not I; that is, I have not been questioned.

18 Q And didn't you say that the whole thing was
19 burnt in August 1945?

20 A I have no recollection whatever of ever
21 having made such a statement.

22 Q If the committee had it before them in
23 October 1945 it could not have been burnt in August,
24 could it?

25 A Yes, I think it would be as you say.

OYAMA

CROSS

Q Then where is it now?

1 A I have no knowledge or familiarity
2 whatsoever with that document.

3 THE PRESIDENT: Witness, are you confusing
4 rape and adultery when you say rape is a complaint-
5 based crime under Japanese law?

6 THE WITNESS: Those two are different;
7 however, both rape and adultery are complaint-based
8 crimes.

9 MR. COMYNS CARR: That concludes my
10 cross-examination.

11 THE PRESIDENT: Mr. Logan.
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REDIRECT EXAMINATION

1 BY MR. LOGAN:

2 Q The prosecution referred to exhibit 1998,
3 case of R. G. Wells. Do you recall being asked some
4 questions about that this morning?

5 A Yes.

6 Q And you were asked whether or not a
7 12-years imprisonment sentence with labor was rather
8 severe and contrary to the terms of the Hague and
9 Geneva Convention where the crime charged was
10 spreading a rumor.

11 A That is how I understood it.

12 Q But the prosecution didn't call to your
13 attention that in this same document from which the
14 prosecutor was reading right underneath the words,
15 "Spreading a rumor," and after a semicolon appears
16 the charge, "Violation of POW Punishment Law." He
17 didn't tell you that, did he?

18 THE PRESIDENT: Mr. Comyns Carr.

19 MR. COMYNS CARR: Your Honor, that without
20 particulars couldn't be a proper charge at all. I
21 assume that the spreading of the rumor is the particu-
22 lars of the violation of the punishment law.

23 Q Irrespective of the prosecu-
24 tion's assumption, are they two separate charges?
25

OYAMA

REDIRECT

1 A Yes, I think they would be two separate
2 charges.

3 THE PRESIDENT: You think? You ought to
4 know what they are.

5 THE WITNESS: Yes, I state as a fact they
6 are two separate charges.

7 Q I show you prosecution exhibit 1965. I ask
8 you to look at the place which is marked there --

9 THE PRESIDENT: From the exhibit itself it
10 is very clear that violation of the POW Punishment
11 Law means violation of the criminal code of some sort
12 because the particular breach is specified in most
13 cases, if not all.

14 Q I ask you to look at that disciplinary law
15 for prisoners of war. Can you find in there any
16 article where the punishment is twelve years or even
17 more for such charges as are set forth in this docu-
18 ment for R. G. Wells, exhibit 1998?

19 THE PRESIDENT: If he cannot find the
20 punishment so great, that only goes to show excessive
21 and illegal punishment in that particular case of
22 Wells.

23 Mr. Comyns Carr.

24 MR. COMYNS CARR: If your Honor please --

25 MR. LOGAN: There is a question unanswered.

OYAMA

REDIRECT

1 THE WITNESS: May I reply?

2 MR. LOGAN: Yes.

3 A There are two charges here, and the first
4 with respect to spreading rumors, this is in vio-
5 lation of the army criminal code, and the punish-
6 ment in connection with such offense is seven years
7 or less. With respect to the violation of the POW
8 regulations, there are various charges and various
9 punishments dealt out as severe as capital punishment.
10 In this prisoners of war disciplinary code there are
11 various charges and various sentences, light ones
12 being about one year, and extremely heavy ones
13 being capital punishment. On the face of this docu-
14 ment, I should say that in connection with the Wells
15 incident he had been charged with the crime of spread-
16 ing rumors and also violation of the prisoners of war
17 disciplinary code; and therefore I should say that
18 since these two charges combined together resulted
19 in the sentence of twelve years I feel it would be
20 in accordance with the law.

21 MR. COMYNS CARR: Your Honor, before my
22 friend leaves the previous question in which he
23 suggested that I had put an unfair question to the
24 witness I ask your Honor to look at page 9, exhibit
25 1998.

OYAMA

REDIRECT

1 MR. LOGAN: If it please the Tribunal, I
2 don't think we should be interrupted this way by
3 counsel for the prosecution. He has had an oppor-
4 tunity for cross-examination. If he has any further
5 questions to put when I have finished I will be glad
6 to give him an opportunity to do so.

7 THE PRESIDENT: I have been basing my
8 observations on page 9 and more particularly on
9 the third last item, "Spreading a rumor"; then in
10 brackets, "Violation of POW Punishments."

11 MR. COMYNS CARR: That is what I intended
12 drawing attention to.

13 BY MR. LOGAN (Continued):

14 Q Well, let us go back to the case of
15 Matthews. The charge there is "Espionage," semi-colan.

16 THE MONITOR: Where is that place, please,
17 Mr. Logan, with respect to Captain Matthews.

18 MR. LOGAN: Page 11, the one before Wells.

19 "Espionage; Plotting Treason, Violation
20 of POW Punishment Law; Spreading a rumor."

21 If the facts as produced at the Court
22 Martial sustained those charges in accordance with
23 the Japanese law, as set forth in prosecution exhibit
24 1965-A, was the sentence of death there in accordance
25 with that law?

OYAMA

REDIRECT

1 A Yes, it would be in accordance with law.

2 THE PRESIDENT: Espionage warrants death
3 in any jurisdiction.

4 Q If the facts supported a charge as set
5 forth in Wells' case, would you say twelve years'
6 imprisonment was excessive under Japanese law?

7 MR. COMYNS CARR: Your Honor, the witness
8 has himself told us, at my friend's suggestion, that
9 for spreading of rumors seven years was the maximum;
10 and as the second charge, if there was one, is not
11 specified, the witness can't possibly know whether
12 it would be a valid sentence or not.

13 A Not so. I said so because there was in
14 this document mentioned that there was a violation
15 of the prisoners of war disciplinary code.

16 Q Didn't you say there were two different
17 charges?

18 MR. COMYNS CARR: He didn't say so, your
19 Honor; he said he thought so.

20 THE INTERPRETER: The witness just stated,
21 "I stated as a fact they were two separate charges.

22 A (Continuing) According to this table, Wells
23 was charged for two crimes: one crime of spreading
24 of wild rumors; the other, violation of the prisoners
25 of war disciplinary law. And I say that the sentence

OYAMA

REDIRECT

1 was in accordance with law because the maximum
2 sentence for spreading wild rumors was seven years
3 or less; and violation of the prisoners of war
4 punishment law varied according to circumstances and
5 according to the degree of the crime; and therefore
6 the two combined, that is sentences which go as far
7 as capital punishment; and therefore with the two
8 charges combined a sentence of twelve years would
9 be in accordance with law. However, in connection
10 with the second charge I would not be able to make
11 any accurate statement unless I knew the facts of
12 the charge itself. According to Japanese law, if
13 there were two charges then these charges are com-
14 bined into a single sentence, and therefore the
15 heavier would include and absorb the lighter sen-
16 tence.

17 THE PRESIDENT: We will recess for fif-
18 teen minutes.

19 (Whereupon, at 1445, a recess was
20 taken until 1500, after which the proceedings
21 were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Logan.

4 MR. LOGAN: I am not sure whether this ques-
5 tion was asked, your Honor.

6 THE PRESIDENT: He may not have completed
7 his answer, Mr. Logan; I don't know.

8 BY MR. LOGAN (Continued):

9 Q Have you finished your answer?

10 A Yes. To the last question, yes.

11 Q I don't know whether this question was
12 asked, but I would like to ask and make sure. Did
13 you have reviewing power over the decisions of courts
14 martial?

15 A I had no such authority. However, by virtue
16 of my position, in case an illegal or unlawful sen-
17 tence were passed, I could bring it to the attention
18 of the Minister of War.

19 Q Did you ever see a complete file of the
20 facts in the record of the trial of Matthews or
21 Welles?

22 A No, I have not. Furthermore, such records
23 do not come to the Ministry of War.

24 MR. LOGAN: That's all. May the witness be
25 excused on the usual terms?

KAWABE, M.

DIRECT

1 THE PRESIDENT: He is excused on the usual
2 terms.

3 (Whereupon, the witness was ex-
4 cused.)

5 - - -

6 MR. LOGAN: I should like to read from
7 defense document 823, exhibit 2479-A in evidence.
8 I would like to call the witness Masakazu KAWABE who
9 made this affidavit.

10 - - -

11 M A S A K A Z U K A W A B E, recalled as a wit-
12 ness on behalf of the defense, having previ-
13 ously been sworn, testified through Japanese
14 interpreters as follows:

15 THE PRESIDENT: You are still on the oath
16 you took before in this court.

17 MR. LOGAN: I will skip page 1 and the top
18 of page 2 of this affidavit which has been previously
19 read. I will start with paragraph one on page 2.

20 THE PRESIDENT: Mr. Sutton.

21 MR. SUTTON: May it please the Tribunal, the
22 prosecution objects to and moves to strike out three
23 portions of the affidavit: first, that portion of
24 paragraph three on page 3 which refers to an order
25 issued by Imperial Headquarters and the operations to

KAWABE, M.

DIRECT

be carried out under it.

1 THE PRESIDENT: Why do you want strict
2 proof of an order like that?

3 MR. SUTTON: We submit it is a violation of
4 the rule allowing the introduction of the purport
5 of a document without accounting for the original.
6

7 THE PRESIDENT: We apply the rule only to
8 bring before us an order of importance that we want
9 to see. We are not concerned about these military
10 operations so far as have no bearing on an issue.

11 MR. SUTTON: The second objection --

12 THE PRESIDENT: You are waiving that one,
13 I take it.

14 MR. SUTTON: Yes. To the first two sen-
15 tences in the paragraph which begins at the bottom
16 of page 4. This includes the last three lines on
17 page 4 and the first five lines on page 5.

18 The third objection is to all of paragraph
19 twelve which is a single sentence at the top of page
20 8.

21 Since no explanation is offered for the
22 failure to produce the original orders, we respect-
23 fully submit that the witness should not be allowed
24 to testify as to the contents.

25 THE PRESIDENT: Mr. Logan.

1 MR. LOGAN: I don't think it is necessary
2 to argue the point. We have discussed it sufficient-
3 ly in the past as to whether these orders are neces-
4 sary.

5 THE PRESIDENT: Those first two objections
6 must be upheld, of course.
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1 MR. LOGAN: (Reading).

2 "I served as chief of the staff under
3 General Shunroku HATA, Commander of the Central
4 China Expeditionary Forces, from February to De-
5 cember 1938, and later as general chief of the staff
6 under General Shunroky HATA, Commander-in-Chief of
7 the China Expeditionary Forces, from August 1942
8 to summer, 1943.

9 "General HATA was appointed Commander-in-
10 Chief of the Central China Expeditionary Forces in
11 succession to General Iwane MATSUI. His duties,
12 however, essentially differed from that of his pre-
13 decessor, Commander-in-Chief MATSUI. His was a
14 very negative one, being restricted to the mainte-
15 nance of peace and order with the strength of about
16 six division in the triangular zone connecting
17 Nanking, Hangchow and Shanghai. Therefore, he did
18 not take over the duties any report concerning
19 military operations from the ex-Commander-in-Chief
20 MATSUI.

21 "In spite of negative restriction of his
22 duties to the maintenance of peace and order, he car-
23 ried out the Hsuechow campaign for the following
24 reasons. About the beginning of April 1938 the
25 North China Expeditionary Forces reached Tsinan

1 while the Central China Expeditionary Forces
2 reached the Hwai River. The 10th Division, how-
3 ever, suffered a considerable loss at the battle
4 of Taierhchwang, east of Hsuehchow, and the 5th
5 Division also was unsuccessful in attacks, thus
6 the North China Expeditionary Forces had diffi-
7 culties for further advance. It was, therefore,
8 found necessary for the two expeditionary forces
9 to expel to the west the enemy forces and secure
10 their contact. The Imperial Headquarters issued
11 an order to carry out such operation. Under these
12 circumstances the HATA Forces began movement on
13 about May 10 and opened an attack against the
14 enemy forces at Taierhchwang, east of Hsuehchow,
15 with the strength of about three divisions, while
16 the North China Expeditionary Force attacked them
17 with about four divisions, with the result that
18 the enemy forces were driven away on about May 20
19 and the battle of Hsuehchow came to an end.

20 "At the last stage of the battle at Hsuehchow,
21 namely, about the middle of May, the Imperial Head-
22 quarters issued an informal order that we should
23 carry out Hankow operations with the Central China
24 Expeditionary Forces as the main strength. We
25 were then to continue Hsuehchow operations on the one

1 hand and prepare ourselves for Hankow operations
2 on the other. This compulsory operation orders
3 threw us into no small panic. In the middle of
4 June, we received from the Imperial Headquarters
5 a formal order to effect Hankow operations.

6 "At the beginning of July we had nec-
7 essary reinforcements for Hankow operations on
8 orders from the Imperial Headquarters and re-
9 organized the entire forces for the operations.
10 The troops reinforced to us the 2nd Army under
11 Prince HIGASHIKUNI and the troops under Lieutenant-
12 General OKAMURA. Wuchang and Hankow campaign was
13 scheduled for early autumn.

14 "Hankow fell on October 26 and on Nov-
15 ember 3 Commander-in-Chief HATA made formal entry
16 into the City. At that time people in Hankow re-
17 mained very calm, order was maintained, the build-
18 ings were in good order, and it was difficult to
19 believe that battle was fought in the city re-
20 cently.

21 "When Wuchang and Hankow fell we met with
22 resistance of the enemies until we reached a spot
23 two or three ri outside the city, but after that
24 little resistance was made and it was almost a
25 bloodless occupation; therefore, the soldiers

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1 remained composed and showed no excitement."

2 THE PRESIDENT: Well, the first sentence
3 in the next paragraph must be omitted.

4 MR. LOGAN: (Continuing).

5 "We also made a definite agreement with
6 the Navy regarding the use of the buildings in
7 the city, and selected the best soldiers out of
8 each unit to enter the city; that is, we trans-
9 ferred the units engaged in the battle to the rear
10 and sent into the city the very best portion of
11 the 13th Division which was not only full trained
12 and educated but was mild and obedient. As we
13 gave such strict orders and instructions and took
14 every precaution with minute care, we believe there
15 was not a single case of violation of military
16 discipline in Hankow, such as massacre, violence,
17 plunder and etc. Nor did we receive any report
18 or even hear of them. I read in the papers that
19 someone testified to the massacre in Hankow, and I
20 am astounded at such an inconceivable testimony.

21 "The Army and Navy air forces engaged in
22 Hankow campaign had their bases in Nanking and
23 Kiukiang, respectively, and were under entirely dif-
24 ferent command. However, part of the air forces had
25 been transferred to the attack of Canton and the

1 strength was considerably decreased so that long
2 distance bombing was not carried out.

3 "The Central China Expeditionary Forces
4 had nothing to do with the Canton operation, and
5 we resented at the transfer of part of the air
6 forces.

7 "The Central China Expeditionary Forces
8 had nothing to do with the Changkufeng Incident
9 either. The occurrence of the Changkufeng In-
10 cident made it impossible for us to get the air
11 forces which the Japanese Army in Manchuria had
12 promised to give us. As the Central China Expe-
13 ditionary Forces were in the midst of the Hankow
14 operations at that time we felt bitter about it.

15 "The authority of General HATA as Com-
16 mander-in-Chief of the Central China Expeditionary
17 Forces was restricted to negative duties relating
18 to the maintenance of peace and order. He had not
19 sufficient strength under him and he had to receive
20 orders from the Imperial Headquarters and get re-
21 inforcements upon their instruction in order to
22 make any military movements. He had no authority
23 to act independently.

24 "Commander-in-Chief of the China Expedi-
25 tionary Forces were restricted to the duties of

1 the strategic operations and military adminis-
2 tration, and offensive operations were beyond
3 his authority."

4 I will skip the next sentence:

5 "Since the China Affairs Board was
6 founded, political and economic affairs hitherto
7 handled by the Commander-in-Chief were trans-
8 ferred to it, but till the set-up of the Board
9 was completed, special service organizations
10 handled them in reality in every place upon re-
11 quest of the Chinese authorities."

12 I shall skip the next paragraph:

13 "The Communist Army in China endeavored
14 to win the people. In the villages under its con-
15 trol all the people offered resistance to the
16 Japanese Army. No sooner had the Japanese Army
17 entered the villages than the Communist went under-
18 ground and they doubled our trouble, because we
19 could not distinguish underground soldiers from
20 the villagers. In those areas we could not but
21 fight the people in general.

22 "The China Expeditionary Forces had nothing
23 to do with the opium problem in China. We had no
24 knowledge of it and we never used the money ob-
25 tained by traffic in opium. Secret funds of the

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1 China Expeditionary Forces was supplied by the
2 War Ministry and we had no other fund. There-
3 fore, it is clear that the Commander-in-Chief
4 had nothing to do with the opium question, but I
5 am not quite certain how far the special service
6 bureau or the special service organizations know
7 about it."

I skip the next paragraph.

1 The headquarters of the Central China
2 Expeditionary Forces was in Shanghai at first since
3 General HATA was appointed Commander-in-Chief, but
4 later it moved to Nanking. Then in March 1941 he
5 was appointed Commander-in-Chief of the China Ex-
6 peditionary Forces in succession to General NISHIO,
7 and the headquarters was in Nanking at that time.
8 Therefore, General HATA stayed at first in Shanghai
9 while he was the Commander-in-Chief of the Central
10 China Expeditionary Forces (1938) and at the time of
11 Wuchang-Hankow campaign he issued orders of despatch
12 of troops at the headquarters in Nanking. He left
13 there on August 25 and moved the headquarters to
14 Kiuking where he stayed until October 30. On Novemb-
15 er 3 he entered Hankow and stayed there until the
16 middle of the same month. After holding a requiem
17 service for the war dead, he returned directly to
18 Nanking.
19

20 The duty of General HATA as Commander-in-
21 Chief of the Central China Expeditionary Forces was
22 not a positive one. His was the negative duty of
23 maintaining peace and order in the occupied areas;
24 therefore he laid special stress on the maintenance
25 of military discipline. Soon after his arrival in

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1 Shanghai he held the conference of Division Command-
2 ers when; I remember vividly, that he gave whole-
3 hearted instructions concerning the maintenance of
4 military discipline. General HATA was not involved
5 in any irksome as he was not engaged in any outstand-
6 ing operations."

7 Signed "At Sugamo Prison 6 December, 1946."

8 Your witness.

9 One minute. I have one question I would like
10 to ask this witness, if the Tribunal please.
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1 BY MR. LOGAN (Continued):

2 Q When did the Hankow campaign start?

3 A The start of the Hankow operations began in
4 this manner: After the Hsuehchow campaign, it was
5 during the month of May, Major General HASHIMOTO,
6 Gun, Chief of the First Division of the Army General
7 Staff, came and said that the Central Army Expedition-
8 ary Forces may be required to be engaged in an opera-
9 tion against Hankow in the near future. That I con-
10 sidered to be the start of the Hankow campaign.
11 But this was -- and he also stated that it was just
12 a preliminary advance notice on the matter. Later,
13 on the basis of the talk had with Major General
14 HASHIMOTO, the Japanese Central China Forces made
15 preparations for the Hankow campaign by capturing
16 Hsuehchow -- Luchow.

17 MR. LOGAN: That's all. You may examine.

18 THE PRESIDENT: Mr. Sutton.

19 MR. SUTTON: May it please the Tribunal.

20 CROSS-EXAMINATION

21 BY MR. SUTTON:

22 Q When was General HATA appointed Commander-
23 in-Chief of the Central China Expeditionary Forces?
24

25 A February, 1938.

Q Was any portion of China north and west of

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1 Nanking occupied by the Central China Expeditionary
2 Forces when General HATA assumed command?

3 A North of Nanking the position extended to
4 Pangpu and, to the west of Nanking, to Wuhu. I do
5 not recall the distance at the present moment.

6 Q Do you know how far north and west of Nan-
7 king the Central China Expeditionary Forces occupied
8 at that time?

9 A The two places, Pangpu and Wuhu, are the
10 northern and western extremities, respectively.

11 Q How far were the Central China Expedition-
12 ary Forces from the Hwai River which was --

13 A The northern extremity is the place which I
14 have already mentioned, namely Pangpu, which over-
15 looks that river.

16 Q When were orders issued by the Imperial Head-
17 quarters for the operation which resulted in the cap-
18 ture of Hsuehow?

19 A I recall that the order was received in
20 April.

21 Q What were the number of troops under General
22 HATA at the time of the Hsuehow operation?

23 A About six divisions and one brigade.

24 Q How many troops were in the six divisions
25 and one brigade?

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1 A Approximately, there were almost one hundred
2 thousand.

3 THE PRESIDENT: Why do you want those par-
4 ticulars? We have a fair idea of these things.
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1 Q What was the strength of the Chinese forces
2 who General HATA attacked at Taierhchuang?

3 A I heard that at that time at Taierhchuang
4 over 200,000 Chinese forces were concentrated.

5 Q Was the resistance stubborn on the part of
6 the Chinese troops?

7 A It was not stubborn. I will repeat. The
8 Chinese Army concentrating around Taierhchuang was
9 extremely stubborn at the time it was under attack
10 by the North China Expeditionary Force.

11 THE PRESIDENT: Does anything turn on that?
12 This sort of thing has been put in affidavits but
13 we thought unnecessarily. We welcomed its absence
14 from this man's affidavit. We hoped it would not be
15 inserted by you, Mr. Sutton.

16 MR. SUTTON: The witness, in his affidavit,
17 testified that General HATA was not engaged in any
18 outstanding operations.

19 THE PRESIDENT: The cross-examination is of
20 no assistance whatsoever so far as it related to those
21 matters.

22 Q How many troops were reinforced to General
23 HATA prior to the Hankow campaign?

24 / A total of approximately seven divisions of
25 reinforcements.

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1 Q I direct your attention to the statement of
2 General HATA in his interrogation, exhibit 256 at page
3 3,445 of the transcript of proceedings, where he was
4 asked the numerical strength of the forces which came
5 down from the north and he replied that while he was
6 not certain he thought about 300,000 or 400,000. Do
7 you agree with the recollection of General HATA?

8 A I cannot understand about these forces coming
9 down from the north.

10 Q It was in reply to a question as to how many
11 forces -- how many troops were reinforced to him from
12 the north prior to the Hankow campaign.

13 A Now I understand. In my recollection the
14 reinforcements which came down from the north consisted
15 of four divisions and one cavalry brigade under the
16 command of Prince HIGASHIKUNI.

17 Q What is the distance from Hsuehow to Hankow?

18 A Hsuehow and Hankow are in completely different
19 directions.

20 Q What is the distance between those two cities?

21 A Being about two hours by airplane, I would
22 assume the distance to be around 600 kilometers.

23 Q And what is the distance between Nanking and
24 Hankow?

25 A About the same.

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1 Q What general was in command of the Chinese
forces defending Hankow?

2 A I cannot say positively, although I heard it
3 was Chen Cheng.

4 Q Was it an easy or difficult campaign?

5 A It was a difficult operation.

6 Q Was it due to the difficulty of this campaign
7 that General HATA resented the transfer of a part of
8 the air forces to Canton?

9 A It was I who resented the fact that part of
10 the air force was transferred to Canton during this
11 difficult operation against Hankow.

12 Q In your affidavit you used the word "we
13 resented." Whom do you refer to when you say "we"?

14 A I was referring to myself and my subordinate
15 officers.

16 Q Was the difficulty of the campaign the reason
17 that you felt bitter because you could not get the
18 airforces you say the Japanese Army in Manchuria had
19 promised to give to the Central China Expeditionary
20 Force?

21 A I just merely expressed two of my recollections
22 and impressions of that time. One is that my great
23 discontent and dissatisfaction over the fact that the
24 sending of air force reinforcements from the Kwantung
25

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1 Army as scheduled was not realized. That is one.
2 The other was the expression of my state of mind and
3 feeling at the time to which I have already referred
4 and that is that I was very much disgruntled over the
5 fact that a part of our air force was removed to
6 another area of operations during the height of the
7 operations against Hankow.

8 THE PRESIDENT: That is very interesting,
9 but it doesn't concern us. The witness is not wholly
10 to blame for wandering like that.

11 Q You stated three times in your affidavit,
12 page 2, page 6, and page 8, that General HATA's duties
13 as commander in chief of the Central China Expedition-
14 ary Force were inactive duties. Were the Japanese --
15 was the battle of Taierhchuang, the capture of Hsuehchow,
16 the campaign resulting in the capture of Wuchang and
17 the fall of Hankow some of the inactive duties of
18 General HATA?

19 A That is something different. That is something
20 else. I first of all mentioned what his primary --
21 I just merely mentioned at first his primary duties
22 as being such, and the operations just mentioned by
23 you were actions taken by the commander in chief after
24 new duties were entrusted to him.
25

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1 THE PRESIDENT: I have a pertinent ques-
2 tion to ask on behalf of a Member of the Tribunal.

3 What do you mean when you say you had to
4 fight the Chinese people in general in those areas
5 where the communists went underground?

6 THE WITNESS: I mentioned the fact that in
7 areas where the communist armies were active it was
8 difficult to distinguish between the communist army
9 troops and the population in general, and Japanese
10 forces assigned to punitive action against the
11 communist armies found extreme difficulty in try-
12 ing to identify the communist troops.

13 THE PRESIDENT: And what did they do as a
14 result? What did the Japanese forces do as a result
15 of that?

16 THE WITNESS: As a result, extreme caution
17 and care was required of the Japanese forces.

18 THE PRESIDENT: Nothing beyond that?

19 THE WITNESS: Nothing further to add on
20 my part.

21 BY MR. SUTTON:

22 Q And that is what you meant by fighting
23 the people?

24 A It was incorrect to say -- to use those
25 words "fighting the people."

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1 Q When did you read in the papers that some
2 one had testified to the massacre at Hankow?

3 A I cannot recall the date, but I do recall a
4 newspaper report on the proceedings of this Tribunal.

5 Q Do you recall who testified concerning the
6 massacre?

7 THE PRESIDENT: Oh, Mr. Sutton, there is
8 a limit to this sort of thing. I know you have
9 given it very careful attention, but most of your
10 questions don't elicit answers that are worth while
11 considering.

12 Q Was the testimony to the effect that after
13 the fall of Hankow Dorrence saw Japanese soldiers
14 kicking and throwing captured Chinese soldiers
15 into the waters of the Yangtzu River and shooting
16 those who came to the surface?

17 THE PRESIDENT: We don't want him to tell
18 us what testimony was given here. But you may
19 put to him your evidence in a proper way to see
20 how he reacts. That is a different matter.

21 Q Do you not know that after the capture of
22 Hankow Japanese soldiers kicked and threw captured
23 Chinese soldiers into the waters of the Yangtzu
24 River and shot those who came to the surface?
25

A I do not know.

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1 Q And do you not know that after the capture
2 of Hankow there were on the streets of Hankow
3 Chinese men dressed in Chinese gowns with their hands
4 wired behind them who had been shot?

5 A I don't know at all.

6 MR. SUTTON: These questions are based
7 upon the testimony of Dorrence, which appears at
8 pages 3392 to 3396 of the transcript of proceedings.

9 THE PRESIDENT: We were told that this
10 morning, and we were also told that was the only
11 testimony.

12 Q When was the ambassador appointed whom you
13 referred to on page 6 of your affidavit?

14 A I recall that the ambassador was appointed
15 after the establishment of the Wang Ching-wei regime.

16 Q Prior to his appointment were all political
17 and economic affairs in the occupied territory of
18 Central China under the control of the army?

19 A Yes, under the supervision of the army.

20 Q After its organization was the China Affairs
21 Board the means through which Japan exercised control
22 over all political and economic affairs in the
23 occupied portions of China?

24 MR. LOGAN: If the Tribunal please, I
25 believe that this and the previous question were

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1 based on the part of the affidavit which was not
2 read.

3 THE PRESIDENT: I take it you are object-
4 ing, Mr. Logan. If so, the objection is upheld.

5 MR. SUTTON: Then, I understand from your
6 Honor that only that portion of the affidavit read
7 is in evidence?

8 THE PRESIDENT: All but what we excised,
9 and I mentioned what that was at the time. In
10 any event, this is not enlightening. We were only
11 too glad to hear the objection.

12 BY MR. SUTTON:

13 Q You mention on page 7 of your affidavit
14 the use of secret funds. How was the secret fund
15 created?
16

17 A Secret funds are funds specially provided
18 to the army and they are applied to such matters
19 as reception and other social expenses of the
20 Commander in Chief.

21 Q What ministry or government agency in
22 Japan made the secret funds available to the army
23 in the field?

24 A Regarding that, all that I know is that
25 they were received from the High Command, that is
to say, the Army General Staff.

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1 Q To whom were the secret funds sent?

2 A They were sent to the Intendance Agency.

3 THE PRESIDENT: We will adjourn until
4 half-past nine tomorrow morning.

5 (Whereupon, at 1600 hours, a recess
6 was taken until Thursday, May 8, at 0930 hours.)
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